C. B-II No.326

JOINT COMMITTEE ON OFFICES OF PROFIT

FIRST REPORT

(SEVENTH LOK SABHA)

Presented to Lok Sabha on 28-8-1981
Laid in Rajya Sabha on 28-8-1981

LOK SABHA SECRETARIAT
NEW DELHI
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CORRIGENDA TO THE FIRST REPORT OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (SEVENTH LOK SABHA)

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JOINT COMMITTEE ON OFFICES OF PROFIT

(SEVENTH LOK SABHA)

COMPOSITION OF THE JOINT COMMITTEE

CHAIRMAN

Shri Gulsher Ahmed

MEMBERS

Lok Sabha

2. Shri Harish Kumar Gangwar
3. Shri Krishna Chandra Halder
4. Shri Virdhi Chander Jain
5. Shri Jagan Nath Kaushal
6. Shri Jamilur Rahman
7. Shri Rashid Masood
8. Shri S. A. Dorai Sebastian
9. Shri N. K. Shejwalkar
10. Shri Nandi Yellaiah.

Rajya Sabha

11. Shri Syed Rahmat Ali
12. Shri Dinesh Goswami
13. Shri Robin Kakati
14. Prof. N. M. Kamble
15. Shri Lakhan Singh

SECRETARIAT

Shri S. D. Kaura—*Chief Legislative Committee Officer.*

Shri S. S. Chawla—*Senior Legislative Committee Officer.*

REPORT OF THE JOINT COMMITTEE

I

INTRODUCTION

I, the Chairman of the Joint Committee on Offices of Profit, having been authorised by the Committee to present the Report on their behalf, present this First Report of the Committee.

1.2. The motion for the constitution of the Joint Committee on Offices of Profit (Seventh Lok Sabha) was moved in Lok Sabha by Shri Shiv Shanker, Minister of Law, Justice and Company Affairs on the 25th November, 1980 (Appendix I).

1.3. The Rajya Sabha concurred in the said motion on the 15th December, 1980 (Appendix II). The message from Rajya Sabha communicating the names of members of Rajya Sabha elected to the Joint Committee was reported to Lok Sabha on the 23rd December, 1980 (Appendix III).

1.4. The names of members of Lok Sabha elected to the Joint Committee were published in the Lok Sabha Bulletin-Part II, dated the 3rd December, 1980 and the names of Members of Rajya Sabha elected to the Joint Committee were published in the Rajya Sabha Bulletin-Part II dated the 22nd December, 1980.

1.5. The Committee held eight sittings on the 4th, 13th and 26th February, 7th and 30th April, 27th and 28th May, and 6th August, 1981.

1.6. At the first sitting of the Committee held on the 4th February, 1981, the Chairman in his inaugural address welcomed the members of the Committee and explained to them broadly the scope and functions of the Committee. The Committee also approved a draft Office Memorandum to be addressed to the Ministries/Departments of the Government of India regarding the Committees/Corporations/Boards etc. constituted by them; and draft letter to be addressed to the State Governments/Union Territory Administrations requesting them to furnish information regarding the Committees/Corporations/Boards etc. constituted by them. The Committee also approved the draft proforma of the Memoranda for placing before the Committee information regarding Committees|Corporations|Boards etc. to be received from Ministries|Departments of the Central Government and the State Governments|Union Territory Administrations.

1.7. At their sittings held on the 13th and 26th February, 7th and 30th April and 27th and 28th May, 1981, the Committee considered 4 Memoranda—Memoranda Nos. 1 and 2 pertained to the request made to the Speaker, Lok Sabha by the State Government of Himachal Pradesh for nomination of Shri Krishan Datt Sultanpuri, M.P. as Vice-Chairman of the Himachal Pradesh Scheduled Castes Development Corporation Memorandum No. 3 related to the nomination of Shri Banwari Lal Bairwa, M.P. by the State Government of Rajasthan to the Rajasthan Orphanages and other Charitable Homes (Supervision) Control Board. Memorandum No. 4 pertained to the Draft Parliament (Prevention of Disqualification) Amendment Bill, 1981 forwarded by the Ministry of Law, Justice and Company Affairs for consideration of the Committee. Due to incomplete information furnished by the Rajasthan Government regarding composition, character and functions etc. of the Rajasthan Orphanages and other Charitable Homes (Supervision) Control Board, the Committee postponed consideration of Memorandum No. 3 regarding nomination of Shri Banwari Lal Bairwa, M.P. to the said Board.

1.8. The Committee heard oral evidence of Shri Krishan Datt Sultanpuri, M.P. and the representatives of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs and Legislative Department) on the 27th May, 1981.

1.9. The decision of the Committee relating to nomination of Shri Krishan Datt Sultanpuri, M.P. as Vice-Chairman of the Himachal Pradesh Scheduled Castes Development Corporation and observations of the Committee on the draft Amendment Bill, 1981, have been given in the succeeding paragrahps.

1.10. The Committee considered and adopted this Report on the 6th August, 1981. The Minutes of the sittings which form part of the Report, are appended to it.

II

NOMINATION OF SHRI KRISHAN DATT SULTANPURI, M.P. AS VICE-CHAIRMAN OF THE HIMACHAL PRADESH SCHEDULED CASTES DEVELOPMENT CORPORATION BY THE STATE GOVERNMENT OF HIMACHAL PRADESH.

2.1. The Committee considered the question of nomination of Shri Krishan Datt Sultanpuri, M.P. as Vice-Chairman of Himachal Pradesh Scheduled Castes Development Corporation on a reference made by the Speaker, Lok Sabha to the Committee. The Committee noted that Shri Sultanpuri, on his nomination as Vice-Chairman of the Corporation would be entitled to TA/DA and medical facilities at the same rate and on the same scale as were admissible to a Member of Parliament. He would also be entitled to free telephone facilities at the residence and office; free conveyance or Rs. 300/- per month as conveyance allowance; and semi-furnished residence or allowance at Rs. 400/- per month in lieu thereof.

2.2. While considering the character and functions of the said Corporation, the Committee felt that the Board of Directors (including Vice-Chairman) of the Corporation exercised functions which were of executive and financial nature and as such they ought not be exempted from disqualification.

2.3. The Committee, however, held over their decision in the matter and desired that a case law having a bearing on the present case might be prepared and circulated to members of the Committee. Accordingly, a background note with case law was prepared by the Lok Sabha Secretariat and circulated to members of the Committee on the 23rd February, 1981.

2.4. At their sitting held on the 26th February, 1981, the Chairman gave resume of the background note and the case law on the subject. The Committee noted that the then Union Minister of Law (Shri C. C. Biswas) during the debate on the Prevention of Disqualification (Parliament and Part C States Legislatures) Bill, 1953 held in Lok Sabha on the 24th December, 1953, had stated, *inter alia,* as follows:—

"* * * * *

"Even where it not monetary profit, but other benefits, that also may come within the meaning of the word 'profit'. For instance, if the office is one to which some power or

Patronage is attached, the office is one in which the holder is entitled to exercise executive functions, an office of dignity, of honour that might be regarded also an office of profit, the idea being that Government must not be in a position to seduce a Member of Parliament by placing him in a position where he can exercise authority, where he thinks he is a somebody and either he has got some money or he is otherwise made very important. All these temptations must be removed. That being the object, the word 'profit' has been given a larger interpretation"

[HP Deb., 24-12-1953, cc. 3113-14; Bhargava Committee Report, Para 27, p. 11.]

2.5. The Committee also noted that the Bhargava Committee in their Report observed, *inter alia*, as follows:

".....Ordinarily, Members of Parliament should be encouraged on such Committees which are of an advisory character and represent the local or popular point of view in a manner which will effectively influence the officials point of view. Members of Parliament by virtue of their membership are in a position to say and represent certain matters with some authority and confidence, and their views are likely to go a long way in influencing the view point of officials. *It is at the same time felt that consistent with their above view expressed, Members of Parliament should not be permitted to go on Committees, Commissions etc. which jeopardise their independence or which will place them in a position of power or influence or in position where they receive some patronage from Government or are themselves in a position to distribute patronage.*"

[Bhargava Committee Report para 70, p. 33].

2.6 The Committee further noted that the Joint Committee on Offices of Profit (Second Lok Sabha) in their Third Report, presented to the House on the 25th April, 1961, made an important change inasmuch as that it recommended non-exemption of even membership|directorship of certain bodies having financial and executive powers. The relevant observations of the Committee are reproduced below:—

"The Committee, during the course of their examination of the composition and functions of various committees, boards etc., referred to in their first two Reports, had felt that membership of some of these bodies was not compatible with membership of Parliament for one reason or the other. For instance certain committees or boards were

entrusted with executive or *judicial powers*. In other cases although membership did not carry any remuneration it placed its members in a position of power or influence or in a position to distribute patronage. In respect of other bodies membership appeared incompatible due to physical impossibility of attending in two places or due to heavy duties being attached to those offices. The Committee also felt that if members, who were associated with certain bodies as directors or otherwise sat in the House they would be in an embarrassing position *vis-a-vis* the Minister responsible for the particular statutory body when such a body came up for discussion in the House." [3R (JCOP—2LS), p. 1 to 2 paragraphs 5—7].

2.7. In this connection the Committee observed that the Bhargava Committee as well as the Joint Committee on the Parliament (Prevention of Disqualification) Bill, 1957 had laid down the following principles|guidelines for their work:

"The holder of an office would be liable to incur disqualification—

(i) if he gets any sum of money more than 'compensatory allowance' by way of daily allowance, conveyance allowance, house rent allowance or traelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office;

(ii) even if he gets any amount which is less than the 'compensatory allowance', if he holds an office in which he exercises executive|financial|judicial or legislative powers or if he wields any influence;

(iii) if he is in a position to distribute patronage;

(iv) if he has the powers of disbursement of loans/funds, lands/licences etc.; and

(v) if he exercises powers of appointment, grant of scholarship etc."

2.8. The Committee also perused a number of ruling/judgements of the Courts|Election Tribunals having a bearing on the case. Extracts from the relevant rulings|judgements are reproduced below:—

(i) In the matter of *Chander Nath V. Kunwar Jaswant Singh*, the Election Tribunal held:—

"The word 'profit' in the present context does not necessarily mean any remuneration in cash, but it certainly means

some kind of advantage or gain which is tangible or which can be perceived. Hence, the mere influence which one gains by virtue of his position as member of a Committee which has no remuneration attached to it, is not profit within the meaning of article 102 or 191, and the member of such a committee would suffer no disqualification by being a member thereof." [3 E.L.R. 1947]

(*ii*) In the mater of *Shivaram Keoranthi V. Venkataramana Gowda*, it was held:

"To constitute an "office of profit " for the purpose of incurring disqualification, prestige and like advantages alone attached to the office will not suffice. Pecuniary advantage is an essential element, and once there is, or there can be, pecuniary gain its quantum is immaterial. [3 E.L.R. 187, see also Uppendralal *V.* Smt. Narainee Devi, A.I.R. 1968 Madhya Pradesh 89].

(iii) In the mater of *Vindhya Pradesh Legislative Assembly Members*, the Chief Election Commissioner held:—

"If consideration is paid in the shape of 'sitting fee' or 'attendance fee', not being daily allowance, it becomes a 'profit' inasmuch as it does not even purport to cover any actual expenses. Such consideration or remuneration is deemed to constitute 'profit' even though, on detailed accounting, it may be found that no financial advantage has, in fact, been gained by the member in question." [4 E.L.R. 422]

(iv) In the case of *Deorao Laxman Anande* V. *Keshav Laxman* Borker, it was held:—

The word "office" does not necessarily imply that it must have an existence apart from the person who may hold it. There could be cases where in order to make use of the special knowledge, talent, skill or experience of certain persons, posts are created which exist only for so long as these persons hold them. It will be difficult to hold that such persons are not holders of offices. Hence, the mere fact that a post which a person holds will cease to exist as soon as he gives it up or that another person cannot be appointed to that post, is not a ground for holding that the person does not hold an 'office' [A.I.R. 1959 Rajasthan 250; see also S. Umrao Singh V. Darbara Singh, AIR 1968 Punjab and Haryana 450]

(v) *In the matter of Shivamurthy Swami Inamdar b. Veerabhadrappa Veerappa,* the Supreme Court laid down the following five tests to decide whether an "office" in question is an "office" under a Government and whether it is an "office of profit"

(a) whether the Government makes the appointment;

(b) whether the government has the right to remove or dismiss the holder;

(c) whether the Government pays the remuneration;

(d) what are the functions of the holder?

(e) does the Government exercise any control over the performance of those functions? [ELR Vol. XLIV, P. 119]

(vi) In the matter of Ravanna Subanna V. G. S. Kaggeerappa, it was held:—

"The plain meaning of the expression seems to be that an office must be held under Government to which any pay, salary, emoluments or allowance is attached. The word 'profit' connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carried any profit." [A.I.R. 1954 Supreme Court p. 653]

2.9. After considering all aspects of the matter, the Committee are unanimously of the view that the functions of the Board of Directors (including Vice-Chairman) of the Himachal Pradesh Scheduled Castes Development Corporation are of executive and financial nature wielding influence and patronage. As such, the Board of Directors including Shri K. D. Sultanpuri, M.P., on his nomination as Vice-Chairman of the said Corporation ought not to be exempt from disqualification.

2.10. Subsequently, Shri K. D. Sultanpuri, MP in his letter dated the 9th March, 1981, addressed to the Speaker, Lok Sabha, represented for a review of the matter and gave the following grounds therefor:—

"(1) It has been held that influence, prestige and like advantages do not constitute an 'office of profit'. Pecuniary

advantage is an essential element (Chander Nath V. Kunwar Jaswant Singh, 3ELR 1947, Shivaram Keoranthi V. Venkataramana Gowda, 3 ELR. 187, see also Upendra Lal V. Smt. Narainee Devi, AIR, 1968 Madhya Pradesh 89). The allowance proposed in the present case, it is already agreed do not amount to pecuniary advantage;

(2) Holding office under statutory corporations need not necessarily mean holding office under the government even though the initial capital of the corporations is contributed by Government. The members of the Corporations are appointed by the government and the government have very large powers of control and supervision over activities of the Corporation (Madras High Court in Narayanaswamy Naidu V. Krishna Murthi, 14 ELR 2). In the present case, it is a statutory Corporation set up under an Himachal Pradesh Act; and

(3) Under article 102, Parliament has the power to declare by law that the holder of an office would be disqualified for being chosen as a Member. The 'office of Profit' has not so far been conclusively defined by Constitution or by law evidently because it is not easy to frame an all embracing definition.

(4) Notwithstanding the above stated points and merits of the case, the H.P. Scheduled Castes Development Corporation is devoted to the task of economic uplift of the members of the Scheduled Castes in the States and the fact under which it is set up provides for two Directors being non-officials belonging to the Scheduled Castes. Now, if Scheduled Castes Members of the Parliament from the State who are the elected representatives of the people are denied opportunity to help the Corporation by being on their Board of Directors, it would be most unfortunate. As you know, Sir, there may not be many persons among the Scheduled Castes who may have a representative character and also the necessary "special knowledge of industries, handicrafts, animal husbandry, agriculture" etc. for being appointed to and being useful on such boards.

(5) In the wider interest of the uplift of the Scheduled Castes and tasks and organisations devoted to that end, my submission to you, Sir, is that Scheduled Castes Members of Parliament may be allowed to accept positions like those of members of the Board of Directors, Vice-Chairman etc. and exempted from disqualifications, if any. I earnestly

hope that if under your guidance and direction, the Joint Committee on Offices of Profit reconsiders the matter in this wider perspective, they would appreciate the position and made suitable recommendations."

2.11. The Speakers, Lok Sabha, directed that the above request of the Member might be placed before the Joint Committee on Offices of Profit for reconsideration.

2.12. On 7th April, 1981 the Committee considered the representation of Shri Sultanpuri requesting for a review of the decision by the Committee. The Committee noted that in the extant case, the State Government of Himachal Pradesh, under Section 7 of the Himachal Pradesh Scheduled Castes Development Corporation Act, 1979, had the power to nominate the Directors (including Vice-Chairman) of the Corporation and under Section 11 of the said Act, it could also, at any time, remove any director from the Office. The Committee also noted that Shri Sultanpuri as Vice-Chairman would be entitled to TA/DA and medical facilities as were admissible to a Member of Parliament. He would also be entitled to free conveyance or Rs. 300/- p.m. and semi-furnished residence or Rs. 400/- p.m. in lieu thereof. The Board of Directors also exercised functions which were of executive and financial nature.

2.13. On suggestions from members for more time to study the court rulings having a bearing on the case of Shri Sultanpuri, further consideration of the matter was postponed by the Committee to their subsequent sitting.

2.14. At their sitting held on the 30th April, 1981, the Committee considered the draft Parliament (Prevention of Disqualification) Amendment Bill, 1981 *vis-a-vis* the case of Shri K. D. Sultanpuri M.P. The Committee were of the view that before coming to a conclusion in the matter, they would like to hear Shri Sultanpuri and the representatives of the Ministry of Law, Justice and Company Affairs (Legislative Department and Department of Legal Affairs).

2.15. On 27th May, 1981, the Committee heard Shri Sultanpuri, and also took oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs and Legislative Department).

2.16. Subsequently, the matter was considered in depth and finalised by the Committee at their sitting held on the 28th May, 1981.

2.17. The Committee do not feel inclined to revise their earlier decision that Shri K. D. Sultanpuri, M.P. on his nomination as Vice-Chairman of the Himachal Pradesh Scheduled Castes Development Corporation ought not to be exempt from disqualification because

of the functions and powers to be exercised by him as Vice-Chairman being of executive and financial nature and also in view of the regular monthly payments of Rs. 300/- by way of conveyance allowance and Rs. 400/- as allowance in lien of the semi-furnished residence.

2.18. In this connection, the Committee also observe that under Article 103 of the Constitution, if any question arises as to whether a sitting member of either House of Parliament has become subject to any of the disqualifications mentioned in clause 1 of Article 102, the question has to be referred for the decision of the President whose decision is final. However, before giving any decision on any such question the President is required to obtain the opinion of the Election Commission and to act according to such opinion.

III

DRAFT PARLIAMENT (PREVENTION OF DISQUALIFICATION) AMENDMENT BILL, 1981

3.1. On the 14th April, 1981 the Ministry of Law, Justice and Company Affairs forwarded the draft of a Bill (Appendix IV) to amend the Parliament (Prevention of Disqualification) Act, 1959 with a request that the Joint Committee on Offices of Profit might consider the draft Bill and present a report thereon. The proposed amending Bill sought to amend (a) Section 2(a) of the Act of 1959 for changing the nomenclature of Salary and Allowances of Members of Parliament Act, 1954 referred to therein; and (b) Clauses (f), (h) and (i) of Section 3 of the Parliament (Prevention of Disqualification) Act, 1959 and also the Explanation under that section with a view to extend exemption to the office of Vice-Chairman of a body as was presently available to the office of Chairman.

3.2. The Committee considered the draft Bill at their sitting held on 30th April, 1981 (Memorandum No. 4). The Committee decided to hear the views of the representatives of the Ministry of Law, Justice and Company Affairs (Legislative Department and Department of Legal Affairs) before arriving at a final decision in the matter.

3.3. The Committee accordingly took oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs on the 27th May, 1981. During evidence, the Secretary, Department of Legal Affairs stated that the main purpose of the Act was only to remove disqualification.

3.4. To another question, the representative of the Legislative Department had opined that for disqualifying a person holding office, there should be 'pecuniary benefit' therefrom. If over and above the out of pocket expenses, something more was received, the case did not fall within the exemption limit under the Act of 1959. Even if that amount was one pie, it would attract disqualification.

3.5. When asked to state the reasons for seeking the Committee's advice on the draft Bill, the representative of the Legislative Department stated that there seemed to be some anomaly in the

Act of 1959 inasmuch as that it covered the 'Chairman' and not the 'Vice-Chairman'. The Committee, however, observed that it was entirely for the Ministry of Law, Justice and Company Affairs to bring forward an amending Bill in that respect and the Committee had nothing to say in the matter at present.

3.6. The Committee considered the matter at some length on the 28th May, 1981.

3.7. The Committee feel that there seems to be no objection to the amendments proposed in the draft amendment Bill, 1981, forwarded by the Ministry of Law, Justice and Company Affairs for changing the nomenclature of the Salary and Allowances of Members of Parliament Act, 1954 referred to in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959 and also for the insertion of the word 'Vice-Chairman' in clauses (f), (h) and (i) of Section 3 of the said Act and also in the Explanation under that Section with a view to extend the exemption from disqualification to the office of 'Vice-Chairman' also as is presently available to the office of 'Chairman.'

NEW DELHI;
6th August, 1981.

Saravana 15, 1903 (*Saka*).

GULSHER AHMED
Chairman,
Joint Committee on Offices of Profit.

APPENDIX I

(*Vide* para 1.2 of the Report)

MOTION IN LOK SABHA FOR THE CONSTITUTION OF THE JOINT COMMITTEE ON OFFICES OF PROFIT

"That a Joint Committee of the Houses to be called the Joint Committee on Offices of Profit be constituted consisting of fifteen members, ten from this House and five from the Rajya Sabha, who shall be elected from amongst the members of each House in accordance with the system of proportional representation by means of the single transferable vote:

That the functions of the Joint Committee shall be—

(i) to examine the composition and character of all existing "committees" [other than those examined by the Joint Committee to which the Parliament (Prevention of Disqualification) Bill, 1957 was referred] and all "committees" that may hereafter be constituted, membership of which may disqualify a person for being chosen as, and for being, a member of either House of Parliament under article 102 of the Constitution;

(ii) to recommend in relation to the "committees" examined by it what offices should disqualify and what offices should not disqualify;

(iii) to scrutinise from time to time the schedule to the Parliament (Prevention of Disqualification) Act, 1959, and to recommend any amendments in the said schedule, whether by way of addition, omission or otherwise;

That the Joint Committee shall, from time to time, report to both Houses of Parliament in respect of all or any of the aforesaid matters;

That the members of the Joint Committee shall hold office for the duration of the present Lok Sabha;

That in order to constitute a sitting of the Joint Committee, the quorum shall be one-third of the total number of members of the Committee;

That in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

That this House recommends to the Rajya Sabha that the Rajya Sabha do join in the said Joint Committee and to communicate to this House the names of members to be appointed by the Rajya Sabha to the Joint Committee."

APPENDIX II

(*Vide* para 1.3 of the Report)

MOTION IN RAJYA SABHA ON 15-12-1980

"That this House concurs in the recommendation of the Lok Sabha that a Joint Committee of the Houses to be called the Joint Committee on Offices of Profit be constituted for the purposes set out in the motion adopted by the Lok Sabha at its sitting held on the 25th November, 1980 and communicated to this House, and resolves that this House do join in the said Joint Committee and proceed to elect, in accordance with the system of proportional representation by means of the single transferable vote, five members from among the members of the House to serve on the said Joint Committee."

APPENDIX III

(*Vide* para 1.3 of the Report)

MESSAGE FROM RAJYA SABHA WHICH WAS REPORTED TO LOK SABHA ON THE 23RD DECEMBER, 1980

SECRETARY: Sir. I have to report the following message received from the Secretary-General of Rajya Sabha:—

'I am directed to inform the Lok Sabha that the Rajya Sabha at its sitting held on Monday, the 15th December, 1980, adopted the following motion in regard to the Joint Committee on Offices of Profit:—

> "That this House concurs in the recommendation of the Lok Sabha that a Joint Committee of the Houses to be called the Joint Committee on Offices of Profit be constituted for the purposes set out in the motion adopted by the Lok Sabha at its sitting held on the 25th November, 1980 and communicated to this House, and resolves that this House do join the said Joint Committee and proceed to elect, in accordance with the system of proportional representation by means of the single transferable vote, five members from among the members of the House to serve on the said Joint Committee.' "

2. I am further to inform the Lok Sabha that in pursuance of the above motion, the following members of the Rajya Sabha have been duly elected to the said Joint Committee:—

1. Shri Robin Kakati
2. Shri Dinesh Goswami
3. Shri Syed Rahmat Ali
4. Prof. N. M. Kamble
5. Shri Lakhan Singh

———

APPENDIX IV

(*Vide* para 3.1 of the Report)

THE PARLIAMENT (PREVENTION OF DISQUALIFICATION) AMENDMENT BILL, 1981.

A

BILL

further to amend the Parliament (Prevention of Disqualification) Act, 1959.

BE it enacted by Parliament in the Thirty-second year of the Republic of India as follows:—

Short title.

1. This Act may be called the Parliament (Prevention of Disqualification) Amendment Act, 1981.

Amendment of section 2.

2. In section 2 of the Parliament (Prevention of Disqualification) Act, 1959 (hereinafter referred to as the principal Act), in clause (a), for the words and figures "the Salaries and Allowances of Members of Parliament Act, 1954", the words and figures "the Salary, Allowances and Pension of Members of Parliament Act 1954" shall be substituted.

Amendment of section 3.

3. In section 3 of the principal Act,—

(a) in clauses (f) and (h), for the word "chairman", the words "chairman, vice-chairman" shall be substituted;

(b) in clause (i), for the words "chairman, director", the words "chairman, vice-chairman, director" shall be substituted;

(c) in the *Explanation* for the words "chairman or" the words "chairman or vice-chairman or " shall be substituted.

MINUTES

APPENDIX V

I

MINUTES OF THE FIRST SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (SEVENTH LOK SABHA)

The Committee met on Wednesday, the 4th February, 1981 from 11.00 to 11.45 hours.

PRESENT

1. Shri Gulsher Ahmed—*Chairman*

MEMBERS

Lok Sabha

2. Shri Harish Kumar Gangwar
3. Shri Virdhi Chander Jain
4. Shri S. A. Dorai Sebastian

Rajya Sabha

5. Shri Syed Rahmat Ali
6. Shri Dinesh Goswami
7. Shri Robin Kakati
8. Prof. N. M. Kamble
9. Shri Lakhan Singh

SECRETARIAT

Shri Gian Chand—*Additional Secretary.*

Shri S. D. Kaura—*Senior Legislative Committee Officer*

2. The Chairman welcomed the members of the Committee and explained to them broadly the scope and functions of the Committee (Annexure-I).

3. The Committee approved the following drafts:—

(i) Office Memorandum regarding the Committees|Corporations|Boards, etc., constituted by the Ministries and Departments of the Central Government (Annexure-II).

(ii) Letter regarding the Committees Corporations/Boards, etc. constituted by the State Governments/Union Territory Administrations. (Annexure-III).

4. The Committee also approved the draft proforma of the Memoranda for placing before the Committee information regarding Committees|Corporations|Boards etc., to be received from Ministries and Departments of the Central Government/State Governments/ Union Territory Administrations (Annexure-IV).

5. Thereafter, the Chairman placed before the committee the request made to the Speaker, Lok Sabha by the Himachal Pradesh Government for nomination of Shri Krishan Dutt Sultanpuri, M.P. as Vice-Chairman of the Himachal Pradesh Scheduled Castes Development Corporation. The Committee decided to consider this matter in detail at their next sitting.

6. The Committee then adjourned to meet again on Wednesday, the *11th February, 1981 at 15.00 hours.

ANNEXURE I

(*vide* para 2 of the minutes)

ADDRESS BY THE CHAIRMAN, JOINT COMMITTEE ON OFFICES OF PROFIT (SEVENTH LOK SABHA) TO THE MEMBERS OF THE COMMITTEE AT ITS FIRST SITTING HELD ON WEDNESDAY, THE 4TH FEBRUARY, 1981.

Friends,

It is my privilege to extend a warm and cordial welcome to the Hon'ble Members who have been elected to the Joint Committee on Offices of Profit of the Seventh Lok Sabha.

Concept of Office of Profit

2. First of all, I may like to mention that the concept of disqualifying a holder of Office of Profit under the Government for being chosen as, and for being, a member of Legislature originated from the need in democratic Governments to limit the control and influence of the Executive over the legislature by means of an undue proportion of office holders being members of the Legislature.

3. In all democracies, including the United Kingdom and U.S.A., office holders under the Government, as a rule, are disqualified for being members of Legislatures. In India, this principle is embodied in Articles 102(1)(a) and 191(1)(a) of the Constitution in regard to the Members of Parliament and the State Legislatures respectively. Article 102(1)(a) of the Constitution reads as under:—

> "102(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—
>
> (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder.
>
> * * * * *

Clause 2 of the above Article also provides that a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State. Article 191 makes analogous provision in respect of membership of State Legislatures.

Connotation of the term 'Office of Profit'

4. The expression "holds any office of profit under the Government" occurring in Articles 102(1)(a) and 191(1)(a) has no where been defined precisely. Its scope has, therefore, to be gathered from the pronouncements on the subject made from time to time by the Courts, Election Tribunals, etc.

5. You may perhaps be aware that Parliament had passed the following laws keeping in view the provisions of Article 102(1)(a) so as to remove doubts about the offices which would be deemed as 'offices of profit' and would disqualify holders thereof from the membership of the Legislature and which would not disqualify:

(i) The Parliament (Prevention of Disqualification Act) 1950;

(ii) The Parliament (Prevention of Disqualification) Act, 1951; and

(iii) The Prevention of Disqualification (Parliament and Part C States Legislatures) Act, 1953 (1 of 1954).

6. Though the office of a Minister already stands exempted under Article 102(2) of the Constitution, the Act of 1950 specifically provided exemption from disqualification of the offices of Minister of State, Deputy Minister, Parliamentary Secretary, etc. The Act of 1951 indemnified certain specified offices like those of the Chairman and Members of the Fiscal Commission, of the Film Enquiry Committee, etc. on which Members of Parliament had been appointed. The Act of 1953 took the process further by exempting from disqualification of offices of Vice-Chancellors of Universities, Deputy Chief Whips of Parliament, offices held by Officers in the National Cadet Corps and in the Territorial Army and the offices of Chairmen and members of Advisory Committees which did not carry any fee or remuneration other than 'compensatory allowance'.

7. All these three enactments were, however, replaced by the Parliament (Prevention of Disqualification) Act, 1959. Briefly, this Act provides that if the member/director of a statutory or non-statutory body/company is not entitled to any remuneration other than the compensatory allowance, he would not incur disqualification for receiving those allowances. Under Section 2(a) of the said Act, "compensatory allowance" has been defined as ' any sum of money payable to the holder of an office by way of daily allowance (such allowance not exceeding the amount of daily allowance to which a Member of Parliament is entitled under the

Salary, Allowances and Pension of Members of Parliament Act, 1954), any conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office."

8. In this connection you would kindly recall that a substantial change in Article 102(1)(a) of the Constitution relating to Office of Profit had been effected by the Constitution (Forty-second Amendment) Act, 1976. The proviso as it originally stood was "A person shall be disqualified for being chosen as, and for being a member of either House of Parliament—if he holds any office of Profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder." But in terms of the amended Article 102(1)(a), "A person shall be disqualified for being chosen as, and for Being. a member of either House of Parliament—if he holds any such Office of Profit under the Government of India or the Government of any State *as is declared by Parliament by law to disqualify its holder.*" However Section 19 of the Constitution (Forty-second Amendment) Act, 1976 effecting the aforesaid amendment has not yet come into force and *status quo continues.*

Origin of the Joint Committee on Offices of Profit

9. Although these enactments went a step forward, yet it was widely felt that none of them comprehensively met the needs of the situation. Upon representation from Members of Parliament, Mr. Speaker Mavalankar in consultation with the Chairman of Rajya Sabha, appointed on August 24, 1954, a Committee on Offices of Profit under the Chairmanship of Pandit Thakurdas Bhargava, M. P. to study various matters connected with disqualification of members and to make recommendations in order to enable the Government to consider the lines along which a comprehensive legislation could be brought before the House. This Committee known as Bhargava Committee, among other things, recommended that a Standing Parliamentary Committee, composed of Members of Parliament of both the Houses to be appointed by the Speaker of Lok Sabha and the Chairman of the Rajya Sabha, might be constituted to undertake the work of continuous scrutiny in respect of Offices of Profit.

10. In pursuance of the recommendations made by the Bhargava Committee, the Government introduced the Parliament (Prevention of Disqualification)** Bill, 1957 on the 5th December, 1957.

**Later enacted as the Parliament (Prevention of Disqualification) Act, 1959.

On a motion made in Lok Sabha, the Bill was referred to a Joint Committee. The Joint Committee presented their Report on the 10th September, 1958. In their Report the Joint Committee on this Bill, like that of the Bhargava Committee, also recommended for constituting a Standing Parliamentary Committee on Offices of profit. When the Parliament (Prevention of Disqualification) Bill, 1957 as reported by the Joint Committee came up before the House the then Minister of Law (Shri A. K. Sen) on 2nd December, 1958, gave an assurance to the House for constituting a Joint Committee on Offices of Profit. In fulfilment of the assurance, a motion was brought on 3rd August, 1959 for the constitution of a Joint Committee on Offices of Profit.

Thus a Parliamentary Joint Committee on Offices of Profit was first constituted in August, 1959 for the duration of the remaining period of Second Lok Sabha. It was constituted again in 1962, 1967 and 1971 for the duration of the Third, Fourth and Fifth Lok Sabhas, respectively. The last Committee ceased to exist after dissolution of the Fifth Lok Sabha on 18th January, 1977. Thereafter, this Committee was, however, not constituted during the Sixth Lok Sabha. This Committee unlike other Parliamentary Committees, is constituted for the duration of a full term of the Lok Sabha.

Functions of the Committee

11. The functions of the Committee as specified in the Motion moved for the constitution of the Committee and adopted by Lok Sabha on 25th November, 1980 and concurred in by Rajya Sabha on 15th December, 1980, are:—

"(i) to examine the composition and character of all existing 'committees' [other than those examined by the Joint Committee to which the Parliament (Prevention of Disqualification) Bill, 1957 was referred] and all 'committees' that may hereafter be constituted, membership of which may disqualify a person for being chosen as, and for being, a member of either House of Parliament under article 102 of the Constitution;

(ii) to recommend in relation to the 'committees' examined by it what offices should disqualify and what offices should not disqualify;

(iii) to scrutinise from time to time the Schedule to the Parliament (Prevention of Disqualification) Act, 1959, and to recommend any amendments in the said Schedule, whether by way of addition, omission or otherwise."

12. The Joint Committee examine the detailed particulars regarding the composition and character, etc., of the 'committees' constituted by the Ministries|Departments of the Central Government as well as by the State Governments. The Joint Committee do not examine the composition and character of 'committees' which consist wholly of officials or which are constituted for *ad hoc* purposes. Further, during the Third Lok Sabha the Joint Committee decided that the composition and character etc. of the bodies registered under the Societies Registration Act need not generally be examined unless any particular case merited consideration.

13. Before I conclude, I would also like to mention that with a view to implement the recommendations made by the Joint Committee on Offices of Profit from time to time in their various Reports, the Government had brought forward a Bill to amend the Parliament (Prevention of Disqualification) Act, 1959, on December 21, 1973. The Bill was passed by Lok Sabha but unfortunately it lapsed while in the Rajya Sabha owing to the dissolution of Lok Sabha on January 18, 1977. I hope the Government will again bring forward this Bill or another comprehensive Bill so as to implement the recommendations made by the previous Committees. In my view, Corporations, Committees etc. which have already been examined by previous Joint Committees on Offices of Profit need not be re-examined as has been the practice in the past.

14. I once again welcome you and trust that you will kindly extend your whole-hearted cooperation and assistance in ensuring the smooth and efficient working of this Joint Committee.

Thanking you.

ANNEXURE II

[*vide* para 3(i) of the minutes]

LOK SABHA SECRETARIAT

Parliament House Annexe,
New Delhi-110001.

No. 21|2|1|80|CII Dated:

OFFICE MEMORANDUM

SUBJECT: *Joint Committee on Offices of Profit (Seventh Lok Sabha)*

The undersigned is directed to state that the Joint Committee on Offices of Profit for the Seventh Lok Sabha has since been constituted.

2. The functions of the Committee are as follows:—

(i) to examine the composition and character of all existing 'committees' [other than those examined by the Joint Committee to which the Parliament (Prevention of Disqualification) Bill, 1957 was referred] and all 'committees' that may hereafter be constituted, membership of which may disqualify a person for being chosen as, and for being, a member of either House of Parliament under Article 102 of the Constitution;

(ii) to recommend in relation to the 'committees' examined by it what offices should disqualify and what offices should not disqualify; and

(iii) to scrutinise from time to time the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 and to recommend any amendments in the said Schedule, whether by way of addition, omission or otherwise.

3. All the Ministries and Departments of the Government of India are requested to please furnish information on the points listed in the enclosure in respect of the following categories of Committees| Boards/Corporations, etc. constituted by Government for which they are responsible:

(i) the existing Committees|Boards|Corporations etc. Constituted by Government which have not so far been examined by the Joint Committee on Offices of Profit;

(ii) the existing Committees|Boards|Corporations etc. constituted by Govt. which, although have already been examined by the Joint Committee on Offices of Profit, but whose constitution (including payment of TA|DA etc. to the members) has undergone material change since their examination by the Committee in the past; and

(iii) the Committees|Boards|Corporations, etc. which may hereafter be constituted|established by Government.

4. Information in respect of the Committees|Boards|Corporations; etc. which are composed wholly of officials or which have been constituted for a temporary period or which have ceased to exist, may not be supplied.

5. Copies of the Acts, rules, resolutions, orders or notifications setting forth the functions, composition, remuneration or allowances etc. paid to the members or the Committees/Boards/Corporations, etc. may also be supplied along with the information furnished by the Ministries and Departments on the lines indicated in para 3 above.

6. The receipt of this Office Memorandum may please be acknowledged.

Sd.|-
GIAN CHAND,
Additional Secretary.

To

All the Ministries and Departments of the Government of India, New Delhi.

ENCLOSURE

(*Vide* para 3 of the Office Memorandum)

(i) Name of the Committee/Board/Corporation, etc.

(ii) Act, Rule or Order under which the same was constituted.

(iii) Composition of the Committee|Board|Corporation etc. (number of officials and non-officials and whether Chairman and Secretary are officials or non-officials).

(iv) Mode of appointment of members.

(v) The term of office of its members.

(vi) The remuneration payable to the members of the Committee/Board/Corporation, etc. including pay, travelling allowance, daily allowance, house-rent allowance, compensatory allowance, sitting fee etc. (Actual rates of payment may be specified).

(vii) Functions of the Committee|Board|Corporation etc. (Datailed functions may be given i. e. whether they perform executive, legislative or judicial functions and whether they have financial powers).

(viii) Capital structure, shareholding, annual turnout of the Company, etc. in case the body is a public undertaking.

ANNEXURE III

[*Vide* para 3 (ii) of the minutes]

LOK SABHA SECRETARIAT

Parliament House Annexe,
New Delhi-110001

No. 21|2|1|80|CII Dated:

From

Shri Gian Chand,
Additional Secretary.

To

The Chief Secretaries to all the State Governments and Union Territories.

SUBJECT: *Joint Committee on Offices of Profit (Seventh Lok Sabha)*

Sir,

I am directed to state that the Joint Committee on Offices of Profit for the Seventh Lok Sabha has since been constituted.

2. The functions of the Committee are as follows:—

(i) to examine the composition and character of all existing "committees" [other than those examined by the Joint Committee to which the Parliament (Prevention of Disqualification) Bill, 1957 was referred] and all "committees" that may hereafter be constituted, membership of which may disqualify a person for being chosen as, and for being, a member of either House of Parliament under article 103 of the Constitution;

(ii) to recommend in relation to the "committees" examined by it what offices should disqualify and what offices should not disqualify;

(iii) to scrutinise from time to time the schedule to the Parliament (Prevention of Disqualification) Act, 1959, and to recommend any amendments in the said Schedule, whether by way of addition, omission or otherwise.

3. I am therefore, directed to request you kindly to furnish information on the points listed in the enclosure in respect of the following categories of Committees|Boards|Corporations etc.

(i) the existing Committees/Boards/Corporations etc. constituted by the State Government|Union Territory which have not so far been examined by the Joint Committee on Offices of Profit;

(ii) the existing Committees|Boards|Corporations etc. constituted by the State Government|Union Territory which, although have already been examined by the Joint Committee on Offices of Profit, but whose constitution (including payment of T.A.|D.A. etc. to the members) has undergone material change since their examination by the Committee in the past; and

(iii) the Committees|Boards|Corporations etc. which may hereafter be constituted|established by the State Government|Union Territory.

4. Information in respect of the Committees|Boards|Corporations, etc. which are composed wholly of officials or which have been constituted for a temporary period or which have ceased to exist, may not be supplied.

5. Copies of the Acts, rules, resolutions, orders or notifications setting forth the functions, composition, remuneration or allowances etc. paid to members of the Committees/Boards/Corporations etc. may also be supplied along with the information furnished by the State Government|Union Territory on the lines indicated in para 3 above.

6. The receipt of this letter may please be acknowledged.

Yours faithfully,

Sd|-

GIAN CHAND

Additional Secretary

ENCLOSURE

(*Vide* para 3 of the letter)

(i) Name of the Committee|Board|Corporation etc.

(ii) Act, Rule or Order under which the Committee|Board|Corporation etc. was constituted.

(iii) The term of office of the members of the Committee|Board|Corporation etc.

(iv) The remuneration payable to the members of the Committee/Board/Corporation etc. including pay, travelling allowance, daily allowance, house-rent allowance, compensatory allowance and sitting fee etc. (Actual rates of payment may be specified).

(v) Composition of the Committee/Board/Corporation etc. (number of officials and non-officials and whether Chairman and Secretary are officials or non-officials).

(vi) Mode of appointment of members.

(vii) Functions of the Committee|Board|Corporation etc. (Detailed functions may be given *i.e.* whether they perform executive, legislative or judicial functions and whether they have financial powers).

(viii) Capital structure, shareholding, annual turnout of the Company etc. in case the body is a public undertaking.

ANNEXURE IV

[*Vide* para 4 of the Minutes]

LOK SABHA SECRETARIAT

Joint Committee on Offices of Profit (Seventh Lok Sabha)

MEMORANDUM NO.

1. Name of the Committee, Board, Council etc.

2. Name of Act, Resolutions, etc. under which constituted and Rules, Regulations, if any, framed thereunder.

3. Term of Office of members.

4. Travelling, daily allowances, etc.

5. Composition.

6. Functions.

7. Manner of appointment.

8. CLASSIFICATION OF COMMITTEE

(i) (a) Whether it is a purely Advisory Committee;

(b) whether it is an Advisory Committee wielding influence or power by way of patronage?

(ii) Whether it is a Non-Advisory Committee which—

(a) carries executive, legislative or judicial powers; or

(b) confers powers of disbursement of funds, allotment of lands, issue of licences etc; or

(c) gives powers of appointment, grant of scholarships etc.?

(iii) Whether it is an office of an occasional or contractual nature?

9. Recommendation.

II

MINUTES OF THE SECOND SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (SEVENTH LOK SABHA)

The Committee met on Friday, the 13th February 1981 from 15.00 to 15.45 hours.

PRESENT

Shri Gulsher Ahmed— *Chairman*

MEMBERS

Lok Sabha

2. Shri Harish Kumar Gangwar
3. Shri Krishna Chandra Halder
4. Shri Jamilur Rahman
5. Shri S. A. Dorai Sebastian
6. Shri Nandi Yellaiah.

Rajya Sabha

7. Shri Syed Rahmat Ali
8. Shri Dinesh Goswami
9. Prof. N. M. Kamble
10. Shri Lakhan Singh

SECRETARIAT

Shri S. D. Kaura—*Senior Legislative Committee Officer.*

2. At the outset, the Chairman informed the Committee that Office Memoranda to the Ministries of the Government of India and letters to the Chief Secretaries of State Governments and Union Territory Administrations requesting them to furnish information regarding the Committee|Corporations etc. constituted by them, had been issued on the 5th February, 1981.

3. The Chairman further informed the Members that copies of the Parliament (Prevention of Disqualification) Act, 1959, had also been circulated to Members of the Committee at their Delhi addresses on the 11th February, 1981.

4. The Committee then took up for consideration Memorandum No. 1 regarding nomination of Shri Krishan Datt Sultanpuri, M.P. as Vice-Chairman of the Himachal Pradesh Scheduled Castes Development Corporation. The Committee noted that Shri Sultanpuri, on his nomination as Vice Chairman of the Corporation, would be entitled to T.A./D.A. and medical facilities at the same rate and on the same scale as were admissible to a Member of Parliament. He would also be entitled to free telephones at the residence and office; free conveyance or Rupees three hundred per month as conveyance allowance; semi-furnished residence or allowance at Rupees four hundred per month in lieu thereof.

5. The Committee were of the view that as these allowances were within the ambit of 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959, Shri Sultanpuri would not incur any disqualification on that account. The Committee, however, noted that as the Board of Directors of the Corporation exercised functions which were of executive and financial nature, the Directors (including Vice-Chairman), ought to incur disqualification. The Committee desired that a case law including decisions of courts on the subject might be placed before them before they could arrive at a final decision in the matter. The Committee, therefore, postponed further consideration of the matter for their next sitting to be held on Thursday, the 26th February, 1981 at 15.30 hours.

The Committee then adjourned.

III

MINUTES OF THE THIRD SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (SEVENTH LOK SABHA)

The Committee met on Thursday, the 26th February, 1981 from 15.30 to 16.45 hours.

PRESENT

Shri Gulsher Ahmed—*Chairman*

MEMBERS

Lok Sabha

2. Shri Krishna Chandra Halder
3. Shri Virdhi Chander Jain
4. Shri Jamilur Rahman
5. Shri S. A. Dorai Sebastian
6. Shri N. K. Shejwalkar

Rajya Sabha

7. Shri Dinesh Goswami
8. Shri Robin Kakati

SECRETARIAT

Shri S. D. Kaura—*Senior Legislative Committee Officer.*

2. At the outset, the Chairman gave resume of the background note and case law prepared by the Secretariat of the Committee and circulated to members.

3. The Committee then took up further consideration of Memorandum No. 1 regarding nomination of Shri Krishan Datt Sultanpuri M.P. as Vice-Chairman of the Himachal Pradesh Scheduled Castes Development Corporation.

4. After some discussion in depth, the Committee were unanimously of the view that the functions of the Board of Directors (including Vice-Chairman) of the Himachal Pradesh Scheduled

Castes Development Corporation were of the executive and financial nature wielding influence and patronage. As such, the Board of Directors besides Shri K. D. Sultanpuri, M.P., on his nomination as Vice-Chairman of the said Corporation, ought not to be exempted from disqualification.

5. The Committee also directed that an enquiry might be made from the Ministry of Law, Justice and Company Affairs as to whether the Government intended to bring forward a comprehensive Bill, based on the recommendations of the Committee made in their numerous Reports from time to time during the Second, Third, Fourth and Fifth Lok Sabha, with a view to amend the Parliament (Prevention of Disqualification) Act, 1959. In this connection, the Committee noted that the Parliament (Prevention of Disqualification) Amendment Bill, 1973, to give effect to the recommendations of the Committee made in their various Reports up to the Fourth Lok Sabha, though passed by Lok Sabha on December 17, 1974 and transmitted to Rajya Sabha on December 18, 1974, lapsed while it was pending in Rajya Sabha on dissolution of the Fifth Lok Sabha on January 18, 1977.

The Committee desired that the Ministry of Law, Justice and Company Affairs might be asked to draft a Bill for the purpose at an early date and to place the same before them for their scrutiny and comments before such an amending Bill was introduced in Lok Sabha.

The Committee then adjourned.

IV

MINUTES OF THE FOURTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (SEVENTH LOK SABHA)

The Committee met on Tuesday, the 7th April, 1981 from 15.35 to 16.10 hours.

PRESENT

Shri Gulsher Ahmed—*Chairman*

MEMBERS

Lok Sabha

2. Shri Krishna Chandra Halder
3. Shri Virdhi Chander Jain
4. Shri Jagan Nath Kaushal
5. Shri N. K. Shejwalkar

Rajya Sabha

6. Shri Syed Rahmat Ali
7. Shri Dinesh Goswami
8. Shri Robin Kakati
9. Prof N. M. Kamble
10. Shri Lakhan Singh

SECRETARIAT

Shri S. D. Kaura—*Senior Legislative Committee Officer.*

2. The Committee took up for consideration Memorandum No. 2 relating to the representation from Shri Krishan Datt Sultanpuri M.P. for review of the decision of the Joint Committee on Offices of Profit in regard to his proposed nomination by the State Government of Himachal Pradesh as Vice-Chairman of Himachal Pradesh Scheduled Castes Development Corporation.

3. At the outset, Shri Jagan Nath Kaushal, M.P., referred to a number of Supreme Court decisions on the connotation of "Office of Profit". He stated that to constitute an 'Office of Profit' it was held by the Supreme Court that prestige and like advantages attached thereto did not suffice. Pecuniary advantage was an essential element. He was of the view that mere exercise of executive and financial powers should not make an office 'an office of profit' in the light of court decisions referred to by him. He, therefore, urged the Committee to reconsider their earlier decision in the matter.

4. After some discussion, some members felt that they would like to study the court decisions to enable them to consider the matter in depth. The Committee, therefore, decided to postpone further consideration of the matter to their next sitting to be held on Wednesday, the 27th May, 1981.

5. As regards Memorandum No. 3 relating to the nomination of Shri Banwari Lal Bairwa, M.P. to the Rajasthan Orphanages and other Charitable Homes (Supervision) Control Board, the Committee decided to postpone consideration of the matter till a copy of the Rajasthan Orphanages and other Charitable Homes (Supervision and Control) Rules, 1964, was received from the State Government of Rajasthan.

6. The Committee then adjourned to meet again on Wednesday, the 27th May, 1981 to resume consideration of Memoranda Nos. 2 and 3.

V

MINUTES OF THE FIFTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (SEVENTH LOK SABHA)

The Committee met on Thursday, the 30th April, 1981 from 15.30 to 16.15 hours.

PRESENT

Shri Gulsher Ahmed—*Chairman*

MEMBERS

Lok Sabha

2. Shri Harish Kumar Gangwar
3. Shri Virdhi Chander Jain
4. Shri Jagan Nath Kaushal
5. Shri Jamilur Rahman
6. Shri Rashid Masood
7. Shri S. A. Dorai Sebastian
8. Shri N. K. Shejwalkar

Rajya Sabha

9. Shri Dinesh Goswami
10. Shri Robin Kakati
11. Prof. N. M. Kamble

SECRETARIAT

Shri S. D. Kaura—*Senior Legislative Committee Officer*

2. The Committee took up for consideration Memorandum No. 4 regarding Draft of the Parliament (Prevention of Disqualification) Amendment Bill, 1981, forwarded by the Ministry of Law, Justice and Company Affairs.

3. After some discussion, the Committee were unanimously of the view that before they gave their considered opinion on the Amendment Bill, they would like to discuss the basic issues in depth

such as the criteria to be adopted by the Committee for determining which offices should disqualify and which offices should not. Accordingly, the Committee decided that before the matter was considered by them at some length at their next sittings to be held on Wednesday, the 27th and Thursday, the 28th May, 1981, they would like to hear Shri K. D. Sultanpuri, M.P. and also the representatives of the Ministry of Law, Justice and Company Affairs (Department of legal Affairs and Legislative Department) in this regard.

4. The Committee then adjourned to meet again on the 27th May, 1981.

VI

MINUTES OF THE SIXTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (SEVENTH LOK SABHA)

The Committee met on Wednesday, the 27th May, 1981 from 10.30 to 13.10 hours.

PRESENT

Shri Gulsher Ahmed—*Chairman*

MEMBERS

Lok Sabha

2. Shri Krishna Chandra Halder
3. Shri Virdhi Chander Jain
4. Shri Jagan Nath Kaushal
5. Shri Jamilur Rahman
6. Shri Rashid Masood
7. Shri S. A. Dorai Sebastian
8. Shri N. K. Shejwalkar
9. Shri Nandi Yellaiah

Rajya Sabha

10. Shri Syed Rahmat Ali
11. Shri Dinesh Goswami
12. Shri Robin Kakati
13. Prof. N. M. Kamble
14. Shri Lakhan Singh

WITNESSES

Shri K. D. Sultanpuri, M.P.

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF LEGAL AFFAIRS AND LEGISLATIVE DEPARTMENT)

1. Shri P. B. Venkatasubramaniam—Secretary, Department of Legal Affairs
2. Shri R. V. S. Peri-Sastri—Secretary, Legislative Department

SECRETARIAT

Shri S. D. Kaura—*Senior Legislative Committee Officer*

2. At the outset, the Committee heard Shri K. D. Sultanpuri, M. P. regarding his proposed nomination by the State Government of Himachal Pradesh as Vice-Chairman of the Himachal Pradesh Scheduled Castes Development Corporation.

3. On being asked whether on his acceptance of the Vice-Chairmanship of the said Corporation, would he not be receiving payments amounting to Rs. 700|- p.m. by way of conveyance allowance and allowance in lieu of semi-furnished residence in addition to TA/DA and medical facilities as admissible to a Member of Parliament, Shri Sultanpuri assured the Committee that though he was entitled to receive these payments, he would not draw an amount which happened to be more than compensatory allowance. He, however, added that in fact he was not to gain anything for himself from the said Corporation but he was to do something for the downtrodden through the medium of the Corporation. He also stated that in case there was realisation that there was a need for the upliftment of the Scheduled Castes, Harijans and the poor particularly in that small State of Himachal Pradesh, there should have to be a provision for participation by Members of Parliament in such a Corporation.

4. On being pointed out that the State Governmen' had the right to appoint, remove or dismiss the Vice-Chairman|Director under Sections 7(2) and 11 of the Himachal Pradesh Scheduled Castes Development Corporation Act, 1979, whether holding of the office of Vice-Chairman of the said Corporation would not amount to an "Office" under the Government. Shri Sultanpuri replied that he had already given everything in writing in that behalf. He however, said that he would abide by the decision of the Committee in that respect.

5. When his attention was drawn to the recommendations made by the Bhargava Committee and the previous Joint Committees on

Offices of Profit which had consistently held that the holder of an office of any statutory body who exercised executive and financial powers would incur disqualification even though the holder of such an office got an amount which might be less than the "compensatory allowance", Shri Sultanpuri stated that in some States, certain MPs were holding the office of Chairman of various statutory Corporations without incurring disqualification. He did not, however, illustrate any speciffc instance in that regard. Shri Sultanpuri, however, reiterated that he would be guided by the decision of the Committee in the matter.

Shri Sultanpuri then withdrew.

6. The Committee then took oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs and Legislative Department) regarding interpretation of clauses (h) and (i) of Section 3 of the Parliament (Prevention of Disqualification) Act, 1959 and the basis on which bodies had been listed in Part I and Part II of the Schedule to the Act.

7. Referring to clause (i) of Section 3 of the 1959 Act according to which chairmanship|chairmanship or secretaryship of certain bodies listed in Part I and Part II of the Schedule to the said Act would incur disqualification, the Committee wanted to know that when the object of the Act was to prevent disqualification then how it was that the said section sought to create a disqualification. The representative of the Ministry (Department of Legal Affairs) stated that the main purpose of the Act was only to remove disqualification. It did so in various cases including those committees mentioned in clauses (h) and (i) of Section 3 of the Act. He further stated that so far as the chairman and secretary of the bodies mentioned in the Schedule were concerned, that by itself carved out an exception. It said that while generally the membership of certain bodies should not disqualify but the stipulation regarding removal of disqualification did not apply to them. It did not say that those offices would disqualify. Whether those offices would disqualify, was a different matter to be decided by the Election Commission or by the Court in appropriate proceedings. All that Parliament had said was "we do not remove this, or grant exemption to these bodies, assuming that they disqualify". As to whether they were disqualified or not, Parliament had not chosen to express any opinion. It only said that the benefit of removal of disqualification would not apply to them.

He further maintained that that was the issue which had been directly considered by one of the High Courts *i.e.* the Mysore High Court in the case of Bapu Rao *Vs* Sidramappa and others' reported at page 84 of Election Law Reports, Volume 41, which read as follows:—

> "The object of Parliament (Prevention of Disqualification) Act, 1959 is not to declare that certain offices are offices of profit and impose any disqualification. Article 102 of the Constitution contemplates legislation by Parliament regarding prevention of disqualification for Membership of Parliament, while Article 191 contemplates legislation by State Legislature for prevention of disqualification for Membership of the State Legislature."

In other words, it meant that Parliament had not said that it was an 'office of profit'. In the case of these exemptions in so far as it was an 'office of profit', there was no removal of disqualification.

3. He further stated that the offices as enumerated in the Schedule did not by itself lead to the conclusion that it was an office of profit. The exemption would arise only if it was an office of profit. If it was an office of profit then there would be no removal of disqualification in the cases excluded.

9. The Law Secretary (Legislative Department), also stated that the basic principle underlying the disqualification was that a person who was given the benefit of an office of profit under the Government might feel obliged to Government and, therefore, might not be able to discharge his functions independently. He added that the Joint Committee on Offices of Profit and its predecessor had laid down a series of tests which had been summarised in paragraph 5 of their Third Report (Fifth Lok Sabha). These had been reiterated by the Committee in paragraph 21 of the same Report. The Law Secretary further stated that supposing it involved financial, judicial and executive powers, he might feel obliged to the Government because of these powers. He might not be able to exercise these powers independently. In other words, the whole object was to enable a Member of Parliament to function independently.

10. To a pointed question that in view of the provisions of the Act of 1959 as passed by the Parliament, which said that payment of 'compensatory allowance' would not be a disqualification, could a Committee appointed by the House go beyond the Act and say "No, we will introduce certain other elements which are not introduced

in the Act". The Law Secretary (Legislative Department) while drawing attention to page 5 of the Second Report of the Joint Committee on Offices of Profit (Fifth Lok Sabha), said that even though under the 1959 Act, no disqualification was attached to the membership or directorship of a body if the remuneration payable did not exceed the compensatory allowance, Parliament did not treat that as final. It was a well settled principle that one Parliament did not bind its successor.

11. To another question whether the payment of remuneration etc. other than the "compensatory allowance" to the holder of an office was the only criterion on which these offices could be excluded from exemption, the representative of the Ministry of Law, Justice and Company Affairs stated that if some payments were made to the holder of an office to recoup expenditure actually incurred by him other than the compensatory allowance, then he would be exempted from disqualification and if he got even one anna more he would incur disqualification. For disqualifying a person holding office there should be 'pecuniary benefit' therefrom. If, over and above the out-of-pocket expenses, something more was received, the case did not fall within the exemption limit under the 1959 Act. Even if that amount was one pie, it would attract disqualification.

12. When asked what was the maximum limit of the "compensatory allowance" payable to a member, as envisaged in Section 2(a) of the 1959 Act, the representative was of the view that the section itself was very clear in that regard.

13. To another question whether payment of money on regular monthly basis to the holder of an office by way of daily allowance, conveyance allowance or house rent allowance could be termed as 'compensatory allowance' the representative of the Ministry clarified that it would depend on the facts of each case but the law in that regard was very clear and contended that it should not be a source of profit. Referring to the observations made by the then Law Minister, Shri C. C. Biswas, in Lok Sabha on 24th December, 1953 during the debate on the Prevention of Disqualification (Parliament and Part C State Legislatures) Bill, 1953, to the effect that even where it was not monetary benefits, but other benefits such as exercise of executive, financial powers or some power or patronage was attached to some office, then that might be regarded as an office of profit, the Committee asked the representatives of the Ministry of Law whether their Ministry agreed to that view, the representatives stated that as Law Secretaries they could not differ from what the Minister had said.

14. The representative then referred to a case of the office of Chairmanship of Jodhpur Municipality where the Chairman was entitled to an honorarium of Rs. 130/-. The court in that case held that "we hold the office of the Chairmanship of the Jodhpur Municipality held by the respondent falls within the meaning of 'office of profit' on account of the receipt of Rs. 130/- per month and also the status and position enjoyed by him as such."

15. When asked to state the reasons for seeking Committee's advice on the draft Parliament (Prevention of Disqualification) Amendment Bill, 1981 which sought to amend the Parliament (Prevention of Disqualification) Act, 1959 with a view to insert the word 'vice-chairman' in clauses (f), (h) and (i) of Section 3 of the aforesaid Act and also in the Explanation thereunder and that how far could the proposed amending Bill benefit the member (Shri Sultanpuri), the representative of the Ministry stated that there seemed to be some anomaly inasmuch as the Act of 1959 covered the 'Chairman' and not the 'Vice-Chairman'. That was why the draft Bill was sent to the Committee for their consideration and Report. Observing that it was entirely for the Ministry of Law to bring forward an amending Bill in that respect, the Committee were of the view that they had nothing to say in the matter as they did not want to commit themselves in that regard.

16. On being enquired about the approximate time by which the Ministry of Law would be in a position to bring forward a comprehensive amending Bill in order to give effect to the various recommendations made by the previous Joint Committees on Offices of Profit in their 36 Reports presented during the Second, Third, Fourth and Fifth Lok Sabha, the representative of the Ministry of Law stated that the Ministry was in the process of collecting the information which had to be gathered from different sources and then checked and scrutinised. He maintained that they would have to ask for sufficient time or the purpose. He further stated that it might not be possible to complete it even by December, 1981. The representative, however, assured the Committee that they would try to do that as quickly as possible.

The Committee then adjourned.

VII

MINUTES OF THE SEVENTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT

(SEVENTH LOK SABHA)

The Committee met on Thursday, the 28th May, 1981 from 09.30 to 10.30 hours.

PRESENT

Shri Gulsher Ahmed—*Chairman*

MEMBERS

Lok Sabha

2. Shri Harish Kumar Gangwar
3. Shri Krishna Chandra Halder
4. Shri Virdhi Chander Jain
5. Shri Jagan Nath Kaushal
6. Shri Jamilur Rahman
7. Shri S. A. Dorai Sebastian
8. Shri N. K. Shejwalkar
9. Shri Nandi Yellaiah

Rajya Sabha

10. Shri Dinesh Goswami
11. Shri Robin Kakati
12. Prof. N. M. Kamble
13. Shri Lakhan Singh

SECRETARIAT

Shri S. D. Kaura—*Senior Legislative Committee Officer*

2. The Committee took up further consideration of Memoranda Nos. 2 and 4 together relating to the representation from Shri K. D. Sultanpuri, M.P. for review of the decision of the Committee in regard to his proposed nomination by the State Government of

Himachal Pradesh as Vice-Chairman of Himachal Pradesh Scheduled Castes Development Corporation and the draft Parliament (Prevention of Disqualification) Amendment Bill, 1981 sent by the Ministry of Law, Justice and Company Affairs (Legislative Department).'

3. After some discussion, the Committee did not feel inclined to revise their earlier decision taken at their sitting held on the 26th February, 1981 that Shri Sultanpuri, on his nomination as Vice-Chairman of the said Corporation, ought not to be exempted from disqualification because of the regular monthly payments of Rs. 300|- p.m. by way of conveyance allowance and Rs. 400|- p.m. as an allowance in lieu of the semi-furnished residence and also in view of the functions and powers to be exercised by him as Vice-Chairman being of executive and financial nature.

4. As regards the draft Parliament (Prevention of Disqualification) Amendment Bill, 1981, forwarded by the Ministry of Law, for changing the nomenclature of the Salary and Allowances of Members of Parliament Act, 1954 referred to in Section 2(a) and also for the insertion of the word 'vice-chairman' in clauses (f), (h) and (i) of Section 3 of the Parliament (Prevention of Disqualification) Act, 1959 and also in the Explanation under that Section, the Committee were of the view that they had no objection to the said draft Amendment Bill for making the above-mentioned changes in the Parliament (Prevention of Disqualification) Act, 1959.

5. The Committee postponed further consideration of Memorandum No. 3 relating to the nomination of Shri Banwari Lal Bairwa, M.P. as a member of the Rajasthan Orphanages and other Charitiable Homes (Supervision) Control Board to their next sitting to be held some time in the first or second week of July, 1981.

The Committee then adjourned.

MINUTES OF THE EIGHTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (SEVENTH LOK SABHA)

The Committee met on Thursday, the 6th August, 1981 from 15.00 to 15.40 hours.

PRESENT

Shri Gulsher Ahmed—*Chairman*

MEMBERS

Lok Sabha

2. Shri Krishna Chandra Halder
3. Shri Virdhi Chander Jain
4. Shri Jamilur Rahman
5. Shri Rashid Masood
6. Shri S. A. Dorai Sebastian
7. Shri N. K. Shejwalkar
8. Shri Nandi Yellaiah

Rajya Sabha

9. Shri Syed Rahmat Ali
10. Shri Robin Kakati
11. Prof. N. M. Kamble
12. Shri Lakhan Singh

SECRETARIAT

Shri S. D. Kaura—*Chief Legislative Committee Officer*
Shri S. S. Chawla— *Senior Legislative Committee Officer*

2. The Committee considered their draft First Report and adopted it with the following amendment:—

Para 3.5. at the end. *add* the words "at present".

3. The Committee then decided that the Report might be presented to Lok Sabha on the 28th August, 1981. The Committee also decided that the Report might be laid on the Table of Rajya Sabha on the same day.

4. The Committee authorised the Chairman, and, in his absence, Shri Jamilur Rahman to present the Report to Lok Sabha on their behalf.

5. The Committee authorised Prof. N. M. Kamble and, in his absence, Shri Lakhan Singh to lay the Report on the Table of Rajya Sabha.

6. Before the next item of the agenda was taken up, the Chairman received a message of the sad demise of Shri Bhupesh Gupta, Member, Rajya Sabha. He then made an obituary reference to the passing away of Shri Gupta describing him as a great parliamentarian, a freedom fighter and a patriot. Thereafter, the members stood in silence for two minutes as a mark of respect to the deceased member.

7. * * * * * *

The Committee then adjourned to meet again on Friday, 7 August, 1981.

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*Omitted portions of the Minutes are not covered by the Report